

ENFORCING SUPPORT

To enforce a child support order in court, a Rule to Show Cause is filed. It can be filed by either a parent or DCSE. It requires the other parent to “show cause” why the court should not punish him/her for violating the court’s order. **The court will enforce the order of child support as it is written, not how the parents interpret the order or how they have agreed the child support should be paid.** The court can **jail or fine** either parent for not following all of the requirements of the child support order. Either parent can hire his or her own lawyer to represent his or her interests in court. Some courts may offer to appoint a lawyer for a parent who cannot afford one.

To comply with the child support order, the noncustodial parent must pay the correct amount of child support, on time, to the correct party. If the court ordered that payments be made through DCSE, the noncustodial parent must pay through DCSE and not directly to the custodial parent.

At the hearing, the custodial parent or DCSE must prove that:

- there is a valid order of child support; and
- the custodial parent did not receive the correct amount of support during the specified time frame.

The custodial parent or DCSE does not have to prove that the noncustodial parent’s failure to pay was willful, malicious, or that the noncustodial parent could have complied with the child support order. The noncustodial parent must present evidence showing that there was no valid child support order or that there was full compliance, or present an appropriate justification for not following the child support order. One example of an appropriate justification would be to prove that it was impossible to comply due to no fault or voluntary action of the noncustodial parent. Some defenses routinely fail. For example:

- unemployment caused by a voluntary act of the noncustodial parent or refusal to actively seek full-time employment;
- the lack of a paternity test prior to the entry of a child support order;
- the lack of visitation with the child;
- the failure of DCSE to apply any payments made by the noncustodial parent to only one of his or her multiple child support cases;
- the failure of an income withholding order to take enough money out of the noncustodial parent’s paycheck to cover his or her child support obligation(s); and
- an illness or injury that does not result in a medically-documented inability to work

The court will consider both the validity of the excuse as to why child support has not been paid along with and, perhaps more importantly, what steps the noncustodial parent is taking to both pay the current child support obligation and to make up any missed payments. The court will most likely find in contempt a noncustodial parent who has neither a sufficient excuse for non-payment nor a plan to fix it. For each “Rule to Show Cause” allegation, the noncustodial parent

can be jailed for up to 12 months. The court has wide latitude in imposing all or part of the sentence, delaying the imposition of the sentence to allow for payment, or suspending a sentence. **The purpose of putting in jail noncustodial parents who do not pay their child support as ordered is to change their behavior to improve future compliance more than to punish them for their past mistakes.** If the noncustodial parent disagrees with the decision of the court, he or she can file a motion to rehear the matter or appeal to a higher court. If the noncustodial parent notes an appeal, there may be a series of bonds that must be posted--appeal, appearance, and performance--prior to the appeal being heard. A noncustodial parent can immediately get out of jail by paying a "purge bond." This is an amount set by the judge that cancels the contempt.

There will be times, however, due to illness, injury, change in employment, etc., that a noncustodial parent can fall behind in making child support payments. If this happens, the best thing the noncustodial parent can do is to immediately inform the custodial parent and/or DCSE of the situation. A review for modification may be requested at this time.